

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 95-0246 CSET
Controlled Substance Excise Tax
For Tax Periods: 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. CONTROLLED SUBSTANCE EXCISE TAX: DOUBLE JEOPARDY

Authority: IC 6-7-3-5; United States Constitution Amendments 5 and 14, Bryant v. State of Indiana (1995)(Indiana Supreme Court).

Taxpayer protests the assessment of Controlled Substance Excise Tax.

STATEMENT OF FACTS

Taxpayer was arrested on February 15, 1995 for the possession of cocaine and methamphetamines. The Indiana Department of Revenue on February 21, 1995 issued a record of Jeopardy finding, Jeopardy Assessment notice and Demand. On February 21, 1995, Taxpayer protested the Controlled Substance Excise Tax assessment. A hearing on this matter was scheduled for June 29, 1998 in room N248 of the Indiana Government Center North at 10:00 a.m. Taxpayer was notified of the hearing by U.S. mail at the Taxpayer's last known address. Taxpayer did not appear for the hearing.

Controlled Substance Excise Tax-Double Jeopardy.

DISCUSSION

Since Taxpayer did not appear at the hearing or offer any written information in lieu of a hearing, the Department has to rely on the contents of the file in making

a decision on the matter. Taxpayer has the burden of proving that the information in the file and assessment are incorrect. IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the delivery and possession of Marijuana in the State of Indiana. The Fifth and Fourteenth Amendments of the United States Constitution prohibit placing any citizen in jeopardy twice for the same action. Jeopardy attaches when a determination of guilt is made and a person is put at risk of punishment. Bryant v. State of Indiana (1995)(Indiana Supreme Court). In the instant case, the Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand put Taxpayer at risk of punishment or in jeopardy on February 21, 1995. There is no evidence in the file as to when Taxpayer was put in jeopardy in the criminal proceeding relating to this possession of controlled substances. It is reasonable to assume, however, that the criminal jeopardy didn't attach until much more than four days after the Department issued the Jeopardy Assessment. Taxpayer did not fulfill his burden of proving otherwise. Therefore the Department's jeopardy assessment was the first and constitutionally permissible jeopardy in his situation.

FINDING

Taxpayer's protest is denied.